

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

**Dale Gerken,**  
Petitioner-Appellant,

v.

**Webster County Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket No. 11-94-0086**  
**Parcel No. 10-22-200-004**

On October 7, 2011, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Dale Gerken (Gerken) requested his appeal be considered without hearing and submitted evidence in support of his petition. The Board of Review designated Assistant County Attorney Cori Kuhn Coleman as its legal representative. The Board of Review submitted evidence in support of its decision. The Appeal Board now having examined the entire record, and being fully advised, finds:

***Findings of Fact***

Gerken appeals from the Webster County Board of Review decision reassessing his agricultural property located at 2527 Kansas Avenue, Fort Dodge, Iowa. According to the property record card, the subject property consists of a two-story, frame dwelling having 1456 square feet of living area built in 1911 and a one-story addition built in 1970 for a total living area of 1768 square feet. He also has 300 square feet of basement finish. The dwelling has a 4+5 quality grade, is in above-normal condition, and has 40% physical depreciation. The property has a 600 square-foot detached garage built in 1874, in excellent condition with a quality grade of 4, and 40% physical depreciation. The property is also improved by: five pole buildings, three grain storage bins and a bucket conveyor built between 1973 and 1989 with physical depreciation between 40% and 70%, and quality grades 4 and 5.

The improvements are situated on 38.850 acres in Elkhorn Township. The real estate was classified as agricultural on the January 1, 2011, assessment and valued at \$169,660, representing \$55,290 in land value, \$86,770 in dwelling value, and \$27,600 in improvement value. This was an increase from the previous year's assessment.

Gerken protested to the Board of Review on the ground that the property assessment is not equitable compared to the assessments of like properties in the taxing jurisdiction under Iowa Code section 441.37(1)(a), and that the property is not assessable, is exempt from taxes or is misclassified under section 441.37(1)(c). He alleged the drainage right-of-way should not be taxable under section 427.2. The Board of Review granted the petition, in part, and reduced the total assessment to \$155,840.

Gerken then appealed to this Board and reasserted his claims. He claims the property's fair market value is \$134,330. He provided five rural agricultural dwellings, all two-story frames built in the late 1800s to early 1900s, to demonstrate inequity, as shown:

Address	Class	Map Area	Year Blt	TSFLA	Basmt Finish	Garage SF	AV Dwlg & Garage	AV PSF	Total AV
1762 250th Street	Ag Dwelling	Elkhorn Agr	1922	2080	0	None	\$ 70,770	\$34.02	\$130,720
1951 260th Street	Residential	Elkhorn	1890	2040	0	572	\$ 51,950	\$25.47	\$81,950
2464 Johnson Ave	Ag Dwelling	Elkhorn Agr	1900	2016	0	252	\$ 35,400	\$17.56	\$94,440
2696 Madison Ave	Ag Dwelling	Otho Agr	1905	1760	0	896	\$ 52,450	\$29.80	\$77,510
2415 Kansas Ave	Ag Dwelling	Elkhorn Agr	1920	1468	0	576	\$ 48,030	\$37.72	\$115,150
Subject	Ag Dwelling	Elkhorn Agr	1911	1768	300	600	\$ 73,230	\$41.42	\$155,840

The assessed value per-square foot of the dwellings/garages range from \$17.56 per-square-foot to \$37.72 per-square-foot with a median of \$29.80 per-square-foot. Gerken's assessed value per-square-foot does exceed the upper limits of this range. However, limited information was provided regarding the equity comparables Gerken identified to allow for meaningful comparison. For example, Gerken's dwelling is in above-average condition and his garage is in excellent condition; however, the record is silent on the condition of the comparables. Gerken's property record card lists

improvements, such as the 1970 addition, and repairs completed, such as siding, re-roofing, and window replacement, but we are unable to determine whether the compared dwellings have similar upgrading. We note while three of the properties have basements, the subject property is the only one with any basement finish which could contribute to the higher assessed value per-square-foot. Because of the limited record, we are unable to determine whether the assessments are inequitable.

Gerken also questions the agricultural land assessment claiming the drainage right-of-way should be exempt from taxation under section 427.2. He provided a plat map of the parcel showing the open-ditch measurements on the acreage. Section 427.2 applies to property acquired through eminent domain when the property owner surrenders possession to a public authority. When ownership is transferred to the authority to establish an open, public drainage improvement, the property is exempt from real estate taxes. Gerken maintains private ownership of the entire subject parcel and has not surrendered possession of a portion of his property to a public authority. Under these facts, section 427.2 does not apply.

Although the drainage right-of-way<sup>1</sup> is not exempt from taxes, the four CSR units attributed to it are excluded from the total CSR points used to arrive at the assessment. The soil calculation report reduces the 3074 total CSR points by the 4 CSR points in the drainage area when arriving at the adjusted CSR total of 3070. The total adjusted CSR value (3070 units) was then multiplied by the unit price (\$17.942) to calculate the assessed value of \$55,082 of this parcel.

Reviewing all the record as a whole, we find the preponderance of the evidence did not establish the subject property is inequitably assessed or that a portion of it should be exempt from taxation as of January 1, 2011.

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<sup>1</sup> The soil report labels the right-of-way a creek (CRK) of 0.06 acres, while the survey designates it as a drainage ditch (DD) of 0.04 acres.

### *Conclusion of Law*

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The gist of this test is the ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market


value. § 441.21(1). Gerken failed to present persuasive evidence sufficient to support the claim that his dwelling assessment was inequitable as compared with assessments of other like property in the taxing district. Although some of the dwellings were assessed at lower per-square-foot rates, little information was provided to determine whether the quality, condition, and features were comparable to the subject property. Additionally, he failed to establish the market value using sales to compare to similar assessments.

In an exemption case, it is appropriate for the Appeal Board to "strictly construe a statute and any doubt about an exemption is resolved in favor of taxation." *Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review*, 613 N.W.2d 252, 254 (Iowa 2000). While section 427.2 provides for drainage right-of-ways to be tax exempt, the exemption only applies to property acquired through eminent domain by an authority for public use. Ownership of Gerken's drainage right-of-way has not been transferred to a government authority for public purposes.

We therefore, affirm the Gerken property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2011, is \$155,840.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessment as determined by the Webster County Board of Review is affirmed.

Dated this 7 day of December 2011.

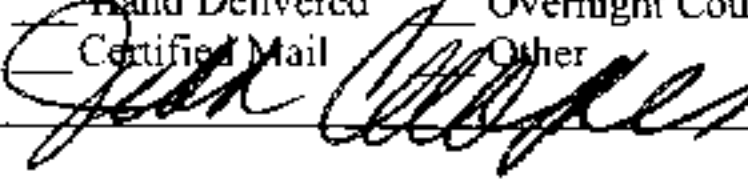
  
Jacqueline Rypma, Presiding Officer

  
Karen Oberman, Board Member

  
Richard Stradley, Board Chair

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>12-7</u> , 201 <u>1</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u></u>